

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

v.

DAVID SERNA

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CRIM ACTION 6:13-CR-26(1)

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

This Report and Recommendation is submitted to the Court pursuant to 28 U.S.C. § 636(b)(3). This case has been referred by the Honorable Michael H. Schneider to the undersigned Magistrate Judge for the taking of a felony guilty plea. The parties have consented to the administration of guilty plea and FED. R. CRIM. P. 11 allocution by a United States Magistrate Judge.

On December 8, 2014, Defendant and counsel appeared before the undersigned, who addressed Defendant personally in open court and informed Defendant of, and determined that Defendant understood, the admonishments under Rule 11 of the Federal Rules of Criminal Procedure. Pursuant to a plea bargain agreement with the Government, Defendant pled guilty to Count 2 of the Indictment. After conducting the proceeding in the form and manner prescribed by FED. R. CRIM. P. 11, the undersigned finds:

1. Defendant, with the advice of his attorney, has consented orally and in writing to enter his guilty plea before a Magistrate Judge subject to final approval and sentencing by the presiding District Judge;
2. Defendant fully understands the nature of the charges and penalties;
3. Defendant fully understands the terms of the plea agreement;

4. Defendant understands his constitutional and statutory rights and wishes to waive these rights, including the right to a trial by jury and the right to appear before a United States District Judge to enter this plea of guilty;
5. Defendant's plea is made freely and voluntarily;
6. Defendant is competent to enter this plea of guilty;
7. There is a factual basis for this plea; and
8. The ends of justice will be served by acceptance of Defendant's plea of guilty.

Recommendation

It is therefore **RECOMMENDED** that the District Judge accept the plea of guilty and enter a final judgment of guilty against Defendant. It is further **RECOMMENDED** that the plea agreement be approved conditioned upon a review of the presentence report.

Before the conclusion of the hearing, the undersigned announced the foregoing recommendation and notified Defendant of his right to object to this Report and Recommendation. Defendant waived that right in open court. The Government also waived its right to object to the Report and Recommendation. It is, therefore, recommended that the Court enter an order accepting the plea of guilty, approving the plea agreement and finding Defendant guilty.

So ORDERED and SIGNED this 8th day of December, 2014.



K. NICOLE MITCHELL
UNITED STATES MAGISTRATE JUDGE